

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee

Hearing Date: Wednesday, January 8, 2014

Place: Department B – Courtroom #12

Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

9:00 A.M.

1.	<u>12-60054</u> -B-7	DWIGHT/NELLIE LONG	MOTION FOR ENTRY OF DEFAULT
	<u>13-1100</u>	RHT-6	JUDGMENT
		HAWKINS V. CITIBANK, N.A.	11-26-13 [<u>14</u>]
		ROBERT HAWKINS/Atty. for mv.	

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion for default judgment will be granted without oral argument for cause shown. The moving party shall submit a proposed order granting the motion and a proposed judgment. No appearance is necessary.

10:00 A.M.

1. [13-15704](#)-B-7 ADRIANA SANCHEZ MOTION TO DISMISS CASE PURSUANT
UST-1 TO 11 U.S.C. SECTION 707(B)
TRACY DAVIS/MV 12-2-13 [[25](#)]
ALBERT GARCIA/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed by stipulation of the parties and order of the court. No appearance is necessary.

2. [13-16907](#)-B-7 SHERRY SHAW OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-21-13 [[14](#)]

3. [13-15819](#)-B-7 RYAN ROLOFF MOTION TO EXTEND DEADLINE TO
SAS-1 FILE A COMPLAINT OBJECTING TO
SHERYL STRAIN/MV DISCHARGE OF THE DEBTOR
12-3-13 [[35](#)]
JEFF REICH/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The bar date under Rule 4004(a) will be extended to January 31, 2014, for the chapter 7 trustee and the U.S. Trustee only. The moving party shall submit a proposed order. No appearance is necessary.

4. [13-15819](#)-B-7 RYAN ROLOFF MOTION FOR SANCTIONS
UST-1 11-27-13 [[30](#)]
TRACY DAVIS/MV
JEFF REICH/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

5. [13-17821](#)-B-7 DAVID/CHRISTINE FOLIA MOTION TO COMPEL ABANDONMENT
TCS-1 12-16-13 [[12](#)]
DAVID FOLIA/MV
TIMOTHY SPRINGER/Atty. for dbt.

The court intends to deny this motion without prejudice. The chapter 7 trustee has not requested an order to shutdown a business or turnover of any assets. The purported "business" is not listed on the petition or the schedules. The purported insurance commissions are valued at \$0 on schedule B and are not exempted on schedule C. The motion is not specific as to which "business" assets the order will apply to and there is no evidence to show that the insurance commissions are burdensome and of inconsequential value to the estate. No appearance is necessary.

6. [13-11224](#)-B-7 DANIEL ARAIZA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-13 [[31](#)]
J. IRIGOYEN/Atty. for dbt.

**This matter will be dropped from calendar. No appearance is necessary.
This OSC relates to fees that should have been paid by the chapter 7 trustee.
This matter needs to be resolved between the trustee and the clerk.**

7. [10-19825](#)-B-7 FRANCISCO/MARIA PARREIRA MOTION TO SELL
HAR-3 12-5-13 [[245](#)]
SHERYL STRAIN/MV
RILEY WALTER/Atty. for dbt.
HILTON RYDER/Atty. for mv.

8. [10-19825](#)-B-7 FRANCISCO/MARIA PARREIRA MOTION RETURN OF AUCTION SALE
HAR-5 AND MOTION TO RATIFY AND
SHERYL STRAIN/MV APPROVE AUCTION SALE OF
DEBTORS' DAIRY HERD AND
EQUIPMENT
12-5-13 [[251](#)]
RILEY WALTER/Atty. for dbt.
HILTON RYDER/Atty. for mv.

9. [13-16830](#)-B-7 GLADYS COZZI MOTION TO SELL
RHT-1 12-10-13 [[13](#)]
ROBERT HAWKINS/MV
BENNY BARCO/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

**This matter was fully noticed in compliance with the Local Rules and there
is no opposition. The motion will be granted without oral argument for
cause shown. The moving party shall submit a proposed order. No
appearance is necessary.**

10. [13-10141](#)-B-7 LINDA WALKER MOTION TO SELL
TGM-3 12-11-13 [[43](#)]
SHERYL STRAIN/MV
STEPHEN LABIAK/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

11. [13-16155](#)-B-7 MICHAEL WEILERT AND MOTION TO CONSOLIDATE LEAD CASE
PLF-2 GENEVIEVE DE MONTREMARE 13-16155 WITH 13-16156
JAMES SALVEN/MV 12-5-13 [[75](#)]
RILEY WALTER/Atty. for dbt.
PETER FEAR/Atty. for mv.

12. [13-16155](#)-B-7 MICHAEL WEILERT AND CONTINUED MOTION TO CONSOLIDATE
PLF-2 GENEVIEVE DE MONTREMARE LEAD CASE 13-16155 WITH
JAMES SALVEN/MV 13-16156
10-30-13 [[59](#)]

RILEY WALTER/Atty. for dbt.
PETER FEAR/Atty. for mv.
JOINDER FILED 11/12/13
13. [13-15266](#)-B-7 PAO LEE CONTINUED MOTION TO AVOID LIEN
JRL-1 OF CAPITAL ONE BANK (USA) N.A.
PAO LEE/MV 11-4-13 [[19](#)]
JERRY LOWE/Atty. for dbt.

The motion will be denied without prejudice. Nothing has been filed in response to the civil minute order entered December 4, 2013. This matter was continued for the submission of evidence that the judgment lien is related to a debt owed by the debtor and that the debtor owned the subject property at the time the judgment lien attached. No appearance is necessary.

14. [13-16884](#)-B-7 LEONEL PRECIADO, SR. AND MOTION TO AVOID LIEN OF CACH,
SL-2 MARIA PRECIADO LLC
LEONEL PRECIADO, SR./MV 12-3-13 [[25](#)]
STEPHEN LABIAK/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

15. [13-16884](#)-B-7 LEONEL PRECIADO, SR. AND MOTION TO AVOID LIEN OF
SL-3 MARIA PRECIADO CITIBANK SOUTH DAKOTA, N.A.
LEONEL PRECIADO, SR./MV 12-3-13 [[30](#)]
STEPHEN LABIAK/Atty. for dbt.

This matter will be continued to January 30, 2014, at 10:00 a.m. The debtors shall file proof that the judgement debtor held an interest in the Simon Street property at the time the abstract was recorded in July 2011. See *Farrey v. Sanderfoot*, 111 S.Ct. 667. The court will prepare a minute order. No appearance is necessary.

16. [13-16884](#)-B-7 LEONEL PRECIADO, SR. AND MOTION TO AVOID LIEN OF CAPITAL
SL-4 MARIA PRECIADO ONE BANK, N.A.
LEONEL PRECIADO, SR./MV 12-3-13 [[35](#)]
STEPHEN LABIAK/Atty. for dbt.

This motion will be denied without prejudice. It does not appear from the evidence that the holder of the subject lien, Capital One Bank (USA) N.A., was properly named in the motion and properly served.

In addition, there is no evidence that the judgment debtor held an interest in the Simon Street property at the time the abstract was recorded in December 2011. See *Farrey v. Sanderfoot*, 111 S.Ct. 667. The court will prepare a minute order. No appearance is necessary.

17. [13-16896](#)-B-7 CYNTHIA RANSOM OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
12-2-13 [[19](#)]

18. [13-17713](#)-B-7 ELVIRA PROBST ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-23-13 [[14](#)]

PETER BUNTING/Atty. for dbt.
PARTIAL FEE PAID ON 12/19/13

This matter has been vacated by order dated December 31, 2013. The fee has been paid.

10:30 A.M.

1. [13-16617](#)-B-7 MICHAEL GROVE
KAZ-1
CAPITAL ONE, N.A./MV
PETER FEAR/Atty. for dbt.
ROSHNI PATEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-6-13 [[14](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

2. [13-16742](#)-B-7 SHAWN/KARLENE GROGAN
ASW-1
SUNTRUST MORTGAGE, INC./MV
JOELY BUI/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-5-13 [[24](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

3. [13-15852](#)-B-7 WILLY/SYLVIA JIMENEZ
KSW-1
SETERUS, INC./MV
RICHARD HARRIS/Atty. for dbt.
KATHERINE WALKER/Atty. for mv.
NON-OPPOSITION, DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-26-13 [[17](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

4. [13-17082](#)-B-7 RONALD RUSHING
MBB-1
BANK OF AMERICA, N.A./MV
RYAN ELLIS/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-4-13 [[16](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

5. [12-16290](#)-B-7 DIONNE HOWELL
APN-1
SANTANDER CONSUMER USA INC./MV
JOSEPH ARNOLD/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-27-13 [[28](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

11:00 A.M.

1. [13-15417](#)-B-7 CHRISTY ARELLANO CONTINUED REAFFIRMATION AGREEMENT
11-18-13 [[23](#)]
2. [13-15439](#)-B-7 JONI WILSON PRO SE REAFFIRMATION AGREEMENT
WITH CIG FINANCIAL
12-4-13 [[25](#)]
3. [13-15882](#)-B-7 ANNA SANTILLAN REAFFIRMATION AGREEMENT WITH
WELLS FARGO DEALER SERVICES
12-3-13 [[25](#)]

ERIC ESCAMILLA/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor's attorney signed the reaffirmation agreement, however, both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. The debtor shall have 14 days to refile the reaffirmation agreement supported by evidence regarding the debtor's current and future income and expenses sufficient to rebut the presumption of undue hardship. No appearance is necessary.

4. [13-16787](#)-B-7 JOSE GUERRERO AND MARIA REAFFIRMATION AGREEMENT WITH
GARCIA TOYOTA MOTOR CREDIT CORPORATION
12-17-13 [[9](#)]

THOMAS GILLIS/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor's attorney signed the reaffirmation agreement, however, both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. The debtor shall have 14 days to refile the reaffirmation agreement supported by evidence regarding the debtor's current and future income and expenses sufficient to rebut the presumption of undue hardship. No appearance is necessary.

5. [13-17196](#)-B-7 SANTOS/THERESA GUARDADO PRO SE REAFFIRMATION AGREEMENT
WITH CAPITAL ONE AUTO FINANCE -
2010 NISSAN VERSA
12-16-13 [[18](#)]
6. [13-17196](#)-B-7 SANTOS/THERESA GUARDADO PRO SE REAFFIRMATION AGREEMENT
WITH CAPITAL ONE AUTO FINANCE -
2010 HONDA CIVIC
12-16-13 [[20](#)]

7. [13-17131](#)-B-7 HECTOR/OLGA URIOSTEGUI

REAFFIRMATION AGREEMENT WITH
AMERICAN AUTO FINANCING INC.
12-12-13 [[19](#)]

THOMAS GILLIS/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor's attorney signed the reaffirmation agreement, however, both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. The debtor shall have 14 days to refile the reaffirmation agreement supported by evidence regarding the debtor's current and future income and expenses sufficient to rebut the presumption of undue hardship. No appearance is necessary.